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BS

FILE: [REDACTED]  
EAC 04 042 53762

Office: VERMONT SERVICE CENTER

Date: OCT 07 2005

IN RE: Petitioner: [REDACTED]  
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:  
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

*Maif Johnson*

Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Director, Vermont Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be sustained and the petition will be approved.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner is a postdoctoral research associate at the University of Virginia School of Medicine. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree but that the petitioner had not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

The director did not dispute that the petitioner qualifies as a member of the professions holding an advanced degree. The sole issue in contention is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to the regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the "prospective national benefit" [required of aliens seeking to qualify as "exceptional."] The

burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

*Matter of New York State Dept. of Transportation*, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien's past record justifies projections of future benefit to the national interest. The petitioner's subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term "prospective" is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

The petitioner submits copies of published articles that she wrote or co-wrote, along with six witness letters. Professor [REDACTED] the petitioner's supervisor at the University of Virginia, states:

[The petitioner] has pursued a novel investigation course of cell stress signal transduction in cancer cells. In a very brief time, [the petitioner] concluded that SAPK [stress-activated protein kinase] regulates the cdc2/cyclin B kinase activity following stress events by a novel mechanism involving the inhibitory phosphorylation of the cdc2-activating phosphatase CDC25c on S168. . . .

Currently, [the petitioner] is conducting research on the protein, Pin1, that could represent a new anti-cancer target. She established a Pin1 affinity purification system using chitin beads to identify novel Pin1 associated proteins. . . . She has made valuable contributions to the understanding of cell cycle regulation in cancer cells, specifically on the molecular mechanisms of gene regulation and cancer cell growth arrest. These contributions significantly enhance our understanding of human cancer diseases.

Professor [REDACTED] also of the University of Virginia, states that the petitioner "has already contributed to Dr. [REDACTED] research program," but offers no details about the petitioner's work, stating instead that this information can be found in Prof. Templeton's letter.

Professor [REDACTED] Medical and Dental University states:

[The petitioner] came to my laboratory because of her interests in the ongoing cancer mechanism research in my laboratory, when I was in charge of a key nationwide project . . . to investigate the mutation of tumor suppressor gene p130 in human oral cancer cell lines. She started work on a DNA sequence and SSCP and decided several mutations in tumor suppressor p130 which proposed a model of gene inactivation in oral tumorigenesis. . . .

She was the first to determine the inhibition of tumor cell growth function of E2FBP1/DRIL1 gene and found E2FBP1/DRIL1 is a target gene of tumor suppressor p53. Moreover, [the

petitioner] demonstrated the mechanism that E2FBP1/DRIL1 induced G1 arrest through binding to p21 DNA and induction of p21 expression. . . .

[The petitioner] is a uniquely qualified scientist in that she can apply a number of diverse approaches to investigate the complicated regulation of the E2FBP1/DRIL1 gene. . . . Her work will eventually lead to the identification of other genes in the same regulatory cascade important for understanding the mechanism of cancer development.

██████████, an associate professor at Tokyo Medical and Dental University, states that the work described above “provides evidence for a novel intermolecular mechanism of cellular response following DNA damage.” ██████████, an assistant professor at the University of Texas M.D. Anderson Cancer Center, states that the petitioner “visited my lab and presented her research [in August 2000]. Based on her achievements, I think very highly of her as an outstanding scientist.”

██████████, an assistant professor at Oregon Health & Science University, states:

I am writing not as a personal acquaintance, but as an authority in the field of molecular oncology that has profound respect for [the petitioner’s] works and professional abilities. . . .

Based on a careful review of her published works, I can attest to the exceptional level of her abilities as a molecular cancer researcher. [The petitioner’s] combined background in medical science, genetics and molecular cell biology gives her a real edge over other researchers. Her original research on cell cycle regulation and the mechanism of tumorigenesis will have a major impact on our understanding of the nature and incidence of cancer. . . . I consider [the petitioner] to be a pioneering expert in exploring and developing new techniques for identifying and characterizing genes.

The director denied the petition, acknowledging the intrinsic merit and national scope of the petitioner’s work, but stating “there is little evidence demonstrating that the beneficiary’s contributions have been substantially greater than any other researcher in the field with the same minimum qualification.” The director indicated that, if the petitioner’s work had been especially important or influential in the field, it would reasonable to expect “a much wider spectrum” of evidence to demonstrate that fact.

On appeal, the petitioner lists her credentials and achievements, and argues that these give her “unique capabilities beyond any number of trained professionals in this field.” She further argues that her “research findings impacted the cancer research field,” and discusses several of her findings and published papers. The petitioner submits documentation showing that one of her papers has been cited 18 times since 2001; a second has been cited three times since 2003. There is no indication as to how many of these citations are self-citations by the petitioner and/or her co-authors. This citation record appears to be marginal, and would not, by itself, justify approval of the petition. We turn, therefore, to the remaining exhibits offered on appeal.

Two new letters accompany the appeal. ██████████, an associate professor at the Uniformed Services University of Health Sciences, states that the petitioner “has made innumerable important contributions to the tumor cell cycle research.” ██████████, director of the Van Andel Research Institute, editor of several journals and a member of the highly exclusive and prestigious National Academy of Sciences, states:

Based on a review of her published research findings, I can attest to the extraordinary level of her abilities as a molecular biologist. Her contributions have impacted the field of molecular biology and are important in conquering cancer. . . .

At the University of Virginia, [the petitioner] is conducting outstanding molecular biology research. . . . She addressed the potential effects of SAPK activation on cell cycle regulatory proteins. . . . Because cell cycle progression is central to the growth and survival of cells, understanding the mechanisms of cell cycle regulators could reveal new targets for therapeutic interventions in disorders that involve de-regulation of tumor cell cycle processes.

This independent and enthusiastic endorsement from a high-ranking researcher carries significant weight. Because the director never issued a request for information prior to the denial, as is generally required by 8 C.F.R. § 103.2(b)(8) when the record does not clearly demonstrate either eligibility or ineligibility, the petitioner never had the opportunity to supplement the record with this persuasive material until the appellate stage.

It does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given field of research, rather than on the merits of the individual alien. That being said, the evidence in the record establishes that the scientific community recognizes the significance of this petitioner's research rather than simply the general area of research. The benefit of retaining this alien's services outweighs the national interest that is inherent in the labor certification process. Therefore, on the basis of the evidence submitted, the petitioner has established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has sustained that burden. Accordingly, the decision of the director denying the petition will be withdrawn and the petition will be approved.

**ORDER:** The appeal is sustained and the petition is approved.